



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2018-0015; FRL-9980-13-Region 8]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Colorado; Regional Haze State Implementation Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Colorado on May 26, 2017, addressing regional haze. The revisions include source-specific revisions to the nitrogen oxides (NO<sub>x</sub>) best available retrofit technology (BART) determination for Craig Station Unit 1 and to the NO<sub>x</sub> reasonable progress determination for the Nucla Station. Both Craig Station Unit 1 and Nucla Station are owned in part and operated by Tri-State Generation & Transmission Association, Inc. (Tri-State). The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2018-0015. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard

copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Jaslyn Dobrahner, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6252, [dobrahner.jaslyn@epa.gov](mailto:dobrahner.jaslyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In our notice of proposed rulemaking published on April 26, 2018 (83 FR 18243), the EPA proposed to approve revisions to Colorado Code of Regulations, Regulation Number 3, Part F, Section VI, submitted by the State of Colorado on May 26, 2017. In this rulemaking, we are taking final action to approve Colorado’s modification of the NO<sub>x</sub> BART determination for Craig Unit 1 and the NO<sub>x</sub> reasonable progress determination for Nucla. Specifically, the EPA is approving the revised Craig Unit 1 NO<sub>x</sub> BART determination, which requires Craig Unit 1 to meet an annual NO<sub>x</sub> emission limit of 4,065 tons per year (tpy) by December 31, 2019. The SIP revision also requires the unit to either (1) convert to natural gas by August 31, 2023, and if converting to natural gas, comply with a NO<sub>x</sub> emission limit of 0.07 lb/MMBtu (30-day rolling average) beginning August 31, 2021, or (2) shut down by December 31, 2025. The EPA is also approving the State’s revised Nucla NO<sub>x</sub> reasonable progress determination, which requires the source to meet an annual NO<sub>x</sub> emission limit of 952 tpy by January 1, 2020, and shut down on or before December 31, 2022. The Colorado Air Quality Control Commission adopted the revisions on

December 15, 2016 (effective February 14, 2017). The reasons for our approval are provided in detail in the proposed rule.

## **II. Response to Comments**

We received five comments during the public comment period. After reviewing the comments, the EPA has determined that four of the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. The remaining comment, submitted by Tri-State, raised concerns with the proposed rule regarding the amortization period and remaining useful life of Craig Unit 1.

*Comment:* First, Tri-State asserts that it is important that accurately representative periods of time be used in calculating the cost effectiveness of emission controls. Specifically, Tri-State asserts that amortization period calculations of eight years are incorrect. Instead, an amortization period of four years for SNCR and two years for SCR should be used, as these represent the periods of time following possible EPA approval of the Colorado SIP and complete installation of the respective technology until the closure date on or before December 31, 2025. The commenter also appreciates Colorado's acknowledgement of differing methodologies to calculate the amortization period and recognizes that a shorter amortization period would not alter Colorado's conclusion, and the EPA's concurrence, that neither SCR or SNCR is cost-effective.

*Response:* We agree with Tri-State that it is important to accurately represent the amortization period used to calculate the cost effectiveness of emission control technologies. In past actions we have measured the amortization period as the time period from the projected compliance date to the date of retirement. In this case, there are multiple dates that could

potentially be used, given the EPA's 2012 approval of Colorado's initial BART determination for Craig Unit 1, the revised BART determination associated with the 2014 settlement, and the updated analysis contained in the 2017 SIP submission. We agree with Colorado that it is appropriate to use a compliance date of August 31, 2021, as the start of the amortization period, as this is the date by which, as the State was conducting the BART analysis, SCR would have had to be installed and operational. Furthermore, August 31, 2021, is the date on which, under the natural gas conversion scenario, Craig Unit 1 must comply with an emission limit of 0.07 MMBtu, which mirrors the BART determination and compliance date in the 2014 settlement. We also agree with Colorado's decision to include a second scenario that conservatively estimates the amortization period based on the compliance dates associated with the State's original BART determinations. However, we disagree with the commenter that it is appropriate to reset the compliance dates based on the 2017 SIP submission, as this ignores the State's existing BART determinations and requirements that were in place at the time of the analysis. Finally, we appreciate the commenter's bringing to our attention Colorado's acknowledgement of Tri-State's alternative amortization period calculation, and we generally agree there may be differing methodologies for calculating the amortization period. However, and as Tri-State recognizes, a shorter amortization period would not alter Colorado's determination that neither SNCR or SCR is cost effective for Craig Unit 1.

*Comment:* Second, Tri-State notes that the natural gas conversion scenario would not shorten the remaining useful life of Craig Unit 1. Specifically, Tri-State argues that determining BART while taking into consideration the remaining useful life of the source does not include incorporating the type of fuel a source uses. Thus, the EPA lacks a basis

to determine that the natural gas conversion scenario would shorten the “remaining useful life of the existing coal-fired boiler.”<sup>1</sup>

*Response:* We thank the commenter for bringing this distinction to our attention and agree with the commenter’s perspective that converting Craig Unit 1 to natural gas does not in itself shorten the remaining useful life of the source. Our intent was to agree with Colorado’s assertion that it is appropriate to reassess the NO<sub>x</sub> BART limit under the remaining period that Craig Unit 1 will be burning coal.

### **III. Final Action**

For the reasons expressed in the proposed rule, the EPA is approving revisions to Regulation Number 3, Part F, Section VI, shown in Table 1 submitted by the State of Colorado on May 26, 2017, addressing the NO<sub>x</sub> BART and reasonable progress requirements for Craig Unit 1 and Nucla, respectively.

**Table 1 - List of Colorado Amendments that the EPA is Approving  
Amended Sections in May 26, 2017 Submittal**

<u>Regulation Number 3, Part F</u> : VI.A.2 (table); VI.A.3; VI.A.4; VI.B.2 (table); VI.B.3; VI.B.4; VI.D; VI.E
---

### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Colorado Code of Regulations described in the amendments set forth to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available

---

<sup>1</sup> 81 FR 18247 (April 26, 2018).

through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>2</sup>

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

---

<sup>2</sup> 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)



## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 28, 2018.

---

Debra Thomas,  
Acting Regional Administrator,  
Region 8.

40 CFR part 52 is amended as follows:

## **PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### **Subpart G – Colorado**

2. Section 52.320 paragraph (c) is amended by revising table entry for VI. under the centered heading “5 CCR 1001-05, Regulation Number 3, Part F, Regional Haze Limits—Best Available Retrofit Technology (BART) and Reasonable Progress (RP).”

The revision reads as follows:

#### **§ 52.320 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

<b>Title</b>	<b>State effective date</b>	<b>EPA effective date</b>	<b>Final rule citation/date</b>	<b>Comments</b>
* * * * *				
<b>5 CCR 1001-05, Regulation Number 3, Part F, Regional Haze Limits—Best Available Retrofit Technology (BART) and Reasonable Progress (RP)</b>				
VI. Regional Haze Determinations	2/14/2017	[Insert date 30 days after date of publication in the <b><u>Federal Register</u></b> ]	[Insert <b><u>Federal Register</u></b> citation], [Insert <b><u>Federal Register</u></b> date of publication]	
* * * * *				

\* \* \* \* \*

[FR Doc. 2018-14387 Filed: 7/3/2018 8:45 am; Publication Date: 7/5/2018]